

REMARKS

Applicant expresses his appreciation to Examiners Keith O. Robinson and David Fox for the courtesy of an interview that was granted to Applicant Dr. Arthur Schaffer and to Applicants' representative, Sanford T. Colb (Reg. No. 26,856). The interview was held in the USPTO on October 19, 2004.

In the interview, 112 rejections were discussed. The Interview Summary Record states, "Applicant intends to provide a 132. Product claims to be redrafted to more clearly distinguish from the prior art".

As discussed in the interview, a 132 Declaration of Dr. Arthur Schaffer is filed herewith.

Applicant has carefully studied the outstanding Official Action. The present response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application is respectfully requested.

Claims 1-16 stand rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement and as failing to comply with the written description requirement.

The Examiner states in page 2 of the Official Action "the specification only provides guidance for crossing a single *Lycopersicon* species, namely *L. hirsutum*, with *L. esculentum* for the introgression of a reduced fruit water content trait".

It is respectfully submitted that the teaching in the specification of crossing a single *Lycopersicon* species, namely *L. hirsutum*, with *L. esculentum* is enabling for other wild *Lycopersicon* species. Evidence for this is provided in the Declaration of Dr. Schaffer.

Additionally, The Examiner states that "it appears that reduced water content is correlated with or identical to increased soluble solids content" (last lines of page 2 of the Official Action).

It is respectfully submitted that there is a clear distinction and a fundamental difference between increase in soluble solids content and resulting reduction in water content on the one hand, and dehydration of a ripe tomato fruit on the other, as discussed in the Declaration of Dr. Schaffer. Therefore, reduced water content due to

the dehydration of the ripe fruit is not identical to increased soluble solids content due to the "different mechanisms of soluble solid accumulation in these species" (pg. 3, second paragraph of the Official Action).

However, in order to more clearly define the present invention, claims 1, 15 and 16 have been amended to recite fruit dehydration which is accompanied by loss of at least 30% of red ripe fruit water content. Support for the amendment can be found in Table 2 of the application.

As was discussed with the Examiner in the interview and as described in the Declaration of Dr. Arthur Schaffer, the *Lycopersicon esculentum* plant, which is the subject of claims 15 and 16, as amended, is readily obtainable by a repeatable method set forth in the specification. For this reason, a deposit is not required.

With respect to the Examiner's rejection starting on page 6 of the Official Action, where the Examiner states: "Patent Owner must describe a representative number of the species of the claimed genus, and that one of skill in the art should be able to visualize or recognize the identity of the members of the genus".

As discussed in the declaration of Dr. Schaffer, the specification refers explicitly to Accession Number LA 1777, which is deposited and classified as a representative *L. hirsutum* (Revised List of Wild Species Stocks, by R. T. Chetelat, Report of the Tomato Genetics Cooperative, vol. 54 (2004) pg. 62). Accordingly, it is respectfully submitted that one of skill in the art should be able to "visualize or recognize the identity of the members of the genus".

Claims 11 - 13 are rejected under 35 U.S.C. 112, second paragraph as being indefinite. Claim 11 has been amended to specify the desired characteristic. Accordingly, claims 11 - 13, as amended, are believed to overcome the rejection thereof under 35 U.S.C. 112, second paragraph.

Claims 15 and 16 stand rejected under 35 U.S.C. 102(b) as being anticipated by Eshed and Zamir (Theor. Appl. Genet. 88:891-897, 1994), Tanksley et al (Theor. Appl. Genet. 92:213-224, 1996) and Azanza et al. (Theor. Appl. Genet. 91:495-504, 1995), each taken separately.

Additional prior art, which was cited in an opposition against a corresponding patent application in Europe, is being disclosed in an IDS. Part of the additional prior art is discussed in the declaration of Dr. Arthur Schaffer.

Eshed and Zamir, Tanksley et al and Azanza et al., each deal with an increase in soluble solids content based on introgression from a different wild species of tomato.

As discussed hereinabove and in the Declaration of Dr. Arthur Schaffer, there is a fundamental distinction between increase in soluble solids content and resulting reduction in water content on the one hand, and dehydration of a ripe tomato fruit on the other. The amendments to the claims, which specify a dehydration of a ripe tomato fruit producing a reduction in red ripe fruit water content of at least 30%, clearly distinguish the subject matter of claims 15 and 16 from the cited prior art.

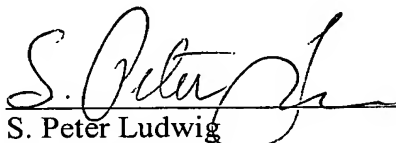
Applicant notes with appreciation the Examiner's indication that claims 1 - 14 are free of the prior art. Applicant respectfully notes that the amendment to claim 1 specifies a reduction in red ripe fruit water content of at least 30% in place of the recitation of wrinkling. Applicant believes that claims 1 - 14 as amended are also free of the prior art.

With reference to the above discussion, independent claims 1, 15 and 16 are deemed patentable over the prior art of record and favorable reconsideration is respectfully requested. Claims 2-14 depend directly or ultimately from claim 1 and recite additional patentable subject matter and therefore are deemed patentable.

In view of the foregoing remarks, all of the claims are believed to be in condition for allowance. Favorable reconsideration and allowance of the application is respectfully requested.

Dated: December 7, 2004

Respectfully submitted,


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